

APPENDIX A

No. 81-3421

D.C.# CV 79-1404

**American Bankers Insurance Company,
Plaintiff/Appellee,**

vs.

Thomas Reusser, Administrator of the Estate of

**Calvin E. Reusser,
Defendant/Appellant.**

MEMORANDUM

**Appeal from the United States District Court for
the District of Idaho.**

Senior District Judge Fred M. Taylor Presiding

[Argued and Submitted July 7, 1982]

**Before: WRIGHT, TANG and CANBY, Circuit
Judges.**

**American Bankers Insurance Company
(American) brought a declaratory judgment action
to determine its liability under a policy issued to
Calvin E. Reusser. The district court held the
policy's intoxication exclusion effective against
Reusser and found American not liable under the
policy. We affirm.**

**Reusser purchased the personal accident
insurance by initialing acceptance on a car rental
agreement. The acceptance acknowledged that he
had read the coverage limits furnished in a**

synopsis. The synopsis, containing the intoxicant exclusion clause, was available in a rack adjacent to the rental counter.

The clerk at the counter did not recall the transaction with Reusser, but testified that she usually referred a customer to the brochure only upon being questioned about coverage.

Reusser was killed while driving the rental car in an intoxicated condition. The district court found that Reusser had in fact read the brochure containing the exclusion condition and that American was not liable to Reusser's estate for the policy benefits.

The estate administrator argues that the district court erred in finding that Reusser read the brochure and asks us to review the findings *de novo*.

Even if we should be inclined to undertake our own review, it is unnecessary to decide if Reusser actually read the brochure. His initials on the agreement, acknowledging his awareness of the coverage limits, presumptively bind him whether or not he read the synopsis. See West v. Prater, 57 Idaho 583, 67 P.2d 273, 278 (1927). His initials established American's prima facie case of notice. See Foremost Insurance Co. v. Putzier, 102 Idaho 138, 627 P.2d 317, 322 (1981); Harman v. Northwestern Mutual Life Insurance Co., 91 Idaho 719, 429 P.2d 849, 851 (1967). The administrator failed to come forward with evidence sufficient to refute the prima facie case. Harman, 429 P.2d at 851.

The administrator contends that the agreement was signed in haste, in an effort to expedite the rental. We know of no authority allowing haste to excuse responsibility for what one signs.

The administrator next argues that the acknowledgment statement on the rental agreement is ambiguous and cannot be interpreted to give notice of the exclusions in the brochure. The district court's findings implicitly include the determination that the acknowledgment statement adequately notified the signer of a reasonable condition. That determination is not clearly erroneous. See Pflueger v. Hopple, 66 Idaho 152, 156 P.2d 316, 318 (1945).

Finally, the administrator relies on the desk clerk's testimony that she referred to the brochure only when questions were asked. We agree that Reusser had no duty to request information about exclusions not revealed to him. Foremost Insurance Co. v. Putzier, 102 Idaho 138, 627 P.2d 317, 322 (1981). But having attested to his awareness of the policy limits, he had a duty to seek the information required to satisfy himself that the exclusions were acceptable. Foremost Insurance Co. v. Putzier, 100 Idaho 883, 606 P.2d 987, 991-992 (1980).

The district court did not err in holding the insured responsible for the acknowledgment he signed.

AFFIRMED.

APPENDIX B

**American Bankers Insurance Company,
Plaintiff/Appellee,**

vs.

**Thomas Reusser, Administrator of the
Estate of Calvin E. Reusser,
Defendant/Appellant.**

No. 81-3421

ORDER

Before: WRIGHT, TANG, and CANBY,
Circuit Judges.

The panel as constituted in the above case has voted to deny the petition for rehearing, and to reject the suggestion for a rehearing en banc.

The full court has been advised of the suggestion for an en banc hearing, and no judge of the court has requested a vote on it. Fed.R.App.P. 35(b).

The petition for rehearing is denied and the suggestion for a rehearing en banc is rejected.

APPENDIX C

In the Supreme Court of the United States

October Term, 1982

No: _____

**Thomas Reusser, Administrator of the
Estate of Calvin E. Reusser,
Petitioner,**

vs.

**American Bankers Insurance Company,
Respondent.**

CERTIFICATE OF SERVICE

I hereby certify that on the 17th day of January, 1983, copies of this Petition were personally delivered to the office of Jeffery A. Strother, Esq., Boise, Idaho. I further certify that all parties required to be served have been served.

DAVID B. VAUGHN
Counsel for Petitioner

APPENDIX D

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

Civ. No. 79-1404

**American Bankers Insurance Company,
Plaintiff,**

v.

**Thomas Reusser, Administrator of the
Estate of Calvin E. Reusser,
Defendant**

MEMORANDUM OF DECISION

Plaintiff, American Bankers Insurance Company (American), brought this action against the representative of the estate of Calvin Reusser, deceased, for a declaratory judgment determining its liability under a group accident insurance policy to which deceased became a member.

The matter was tried to the court, without a jury, and on submission was taken under advisement by the court for determination.

The stipulated facts as set forth in the pretrial order are as follows: Effective September 1, 1975, American issued Policy No. 1901 to an entity known as the Insurance Protection Trust. Later that month, Rent Car, Inc., the Hertz Rent-A-Car licensee in Boise, Idaho, began its participation in the group insurance program administered by the Trust. Rent Car received a copy of the policy in October, 1975. The policy provided, on the dates relevant to this lawsuit, accidental death benefits of \$150,000 in addition to certain medical and

miscellaneous benefits. An exclusion in the policy provided:

"This insurance shall not cover any loss caused directly or indirectly, wholly, or partly by . . . (e) intoxicants or narcotics . . ."

It is defendant's contention that the deceased as an insured was not informed of the exclusion and at the time he rented the automobile and procured the personal accident coverage from Rent Car he had no knowledge of the exclusion.

Calvin Reusser, deceased, rented a car from Rent Car's Boise airport outlet on the morning of July 6, 1979. In the course of the transaction, Reusser initialed a box on Rental Agreement No. L 2072771-1 and by doing so indicated his acceptance of Personal Accident Insurance (PAI) and acknowledged that he had read the "Synopsis of Coverage Limits" furnished by Rent Car at its Boise outlet. By initialing the box and agreeing to pay the necessary premium, Reusser became a member of the group covered under the policy issued by American. The rental agreement makes no other reference to the insurance coverage limits, exclusions or exceptions. Brochures explaining the coverage provided by the policy were available from the Rent Car facility at the Boise airport when Reusser entered into the rental agreement. The brochures stated "this insurance shall not cover any loss caused directly or indirectly by . . . (e) intoxicants or narcotics . . ."

At approximately 11:45 p.m. on July 6, 1979, Reusser was killed in a one-car accident near

Donnelly, Idaho. He was the driver and sole occupant of the car.

The outcome of this lawsuit is controlled by the resolution of two factual issues: (1) whether Reusser's death was caused, directly or indirectly, by intoxicants; and (2) whether Reusser was aware of the policy exclusion for injury or death so caused. Resolution of the first issue poses little difficulty. From the evidence adduced at trial, the court is firmly convinced that the accident and Reusser's death was in fact caused by his intoxication.

The second issue may be arguable and less clear. However, as set forth below, the court is of the opinion that the question of whether Reusser had knowledge of the exclusion regarding intoxicants must be answered in the affirmative. Immediately below the box marked "Accepts PAI" in which Reusser placed his initials, the following language appears in the Rental Agreement:

BY INITIALS, Customer declines or accepts PAI. If 'Accepts', customer accepts coverage at rate shown and acknowledges to have read the SYNOPSIS of Coverage Limits furnished by Lessor at rental.

The synopsis admitted into evidence as plaintiff's Exhibit 9 contains the exclusion relating to intoxicants. According to the unrefuted testimony of Cynthia Clark, the Rent Car employee who handled the Reusser rental transaction, plaintiff's Exhibit 9 was available to customers at the Boise airport outlet, and was located in a rack on the

counter to the customer's right. There was no evidence adduced at trial to show the existence of any synopsis other than Exhibit 9 at the airport facility. Defendant offered defendant's Exhibit 10, a similar synopsis which did *not* contain the intoxicant exclusion, but due to the absence of any evidence showing its presence at the airport facility on July 6, 1979, the same was rejected for lack of relevancy.

Because Reusser, by his initials, acknowledged having read that synopsis of coverage "furnished by Lessor at rental", and because it appears from the evidence adduced that plaintiff's Exhibit 9 was the only synopsis available for him to have read at the airport facility, the court must find and conclude that Reusser did in fact read plaintiff's Exhibit 9 and thereby acquired actual knowledge of the exclusion regarding intoxicants contained therein. The defendant had the impossible burden of showing that the deceased did not read and have knowledge of the exclusion in regard to coverage. The defendant has not sustained this burden.

Accordingly, plaintiff is entitled to a judgment declaring that Reusser's death, as a result of the accident on July 6, 1979, was not covered by American Bankers Insurance Company Personal Accident Insurance Policy No. 1901. Counsel for plaintiff shall prepare proposed Findings of Fact and Conclusions of Law and Judgment, serve copies of the same on counsel for the defendant, and submit the originals to the court.

Dated this 18th day of May, 1981.

FRED M. TAYLOR
United States District Judge

APPENDIX E

**IN THE UNITED STATES DISTRICT COURT
FOR THE DISTRICT OF IDAHO**

**American Bankers Insurance Company,
Plaintiff,**

v.

**Thomas Reusser, Administrator of the
Estate of Calvin E. Reusser,
Defendant.**

Case No. 79-1404

**FINDINGS OF FACT AND
CONCLUSIONS OF LAW**

On April 21, 1981, this action was tried to the court. Now, having considered the evidence adduced at trial and the written and oral arguments of counsel, the court believes itself to be fully advised of the facts and law relevant to this action and has reached the following conclusions:

FINDINGS OF FACT

1. American Bankers Insurance Company is a Florida corporation with its principal place of business in Florida. At all times relevant to this action, it was duly authorized to conduct business within Idaho;

2. Thomas Reusser is a citizen and resident of Idaho;

3. There is diversity of citizenship, and the amount in controversy in this action exceeds \$10,000, exclusive of interest and costs;

4. Effective September 1, 1975, American Bankers issued Policy No. 1901 to the Insurance Protection Trust. Later that month, Rent Car, Inc., the Hertz Rent-A-Car licensee in Boise, Idaho, began its participation in the group insurance program administered by the Trust. Rent Car, Inc., operates three outlets in Boise, including one at the Boise Municipal Airport;

5. As amended, Policy No. 1901 provided, on the dates relevant to this lawsuit, insurance benefits of \$150,000 payable on the death of a member of the group and benefits for medical and ambulance expenses incurred by members of the group with limits of \$1,500 and \$150 respectively;

6. Policy No. 1901 included the following provision:

"This insurance shall not cover any loss caused directly or indirectly, wholly, or partly by . . .
(e) intoxicants or narcotics . . ."

7. On July 6, 1979, Calvin Reusser rented a car from Rent Car at the outlet in the Boise airport. The terms of the agreement between Reusser and Rent Car appear in Rental Agreement No. L 2072771 1. In the course of the transaction, Reusser initialed a box on this rental agreement indicating his acceptance of Personal Accident Insurance (PAI) and acknowledging that he had read the "Synopsis of Coverage Limits" furnished by Rent Car at the outlet. The synopsis was located in a rack on the counter to Reusser's right. The synopsis stated:

"This insurance shall not cover any loss caused directly or indirectly by . . . (e) intoxicants or narcotics . . ."

This synopsis was available for Reusser's inspection when he entered into the rental agreement;

8. Reusser read the synopsis and knew of the exclusion of coverage regarding intoxicants;

9. At approximately 11:45 p.m. on July 6, 1979, Reusser was killed in a one-car accident near Donnelly, Idaho. He was the driver and sole occupant of the car;

10. On July 20, 1979, the Idaho Bureau of Laboratories conducted an accurate test of a blood sample taken from Calvin Reusser's body that showed the blood alcohol content of the sample to be .26;

11. At the time of the accident, Calvin Reusser was intoxicated. This intoxication was the direct cause of the accident and Reusser's death.

CONCLUSIONS OF LAW

1. This court has jurisdiction over the subject matter of this litigation. Venue is proper in this court;

2. Coverage under Policy No. 1901 for Reusser's death is excluded by the terms of the exclusion concerning intoxicants;

3. Calvin Reusser had notice of the terms of this exclusion when he entered into the rental agreement;

4. American Bankers is entitled to judgment declaring that Reusser's death was not covered by the PAI purchased by Reusser when he rented the car on July 6, 1979.

DATED this 19th day of June, 1981.

FRED M. TAYLOR
District Judge

APPENDIX F

**UNITED STATES DISTRICT COURT FOR
THE DISTRICT OF IDAHO
Civil No. 79-1404**

**American Bankers Insurance Company,
Plaintiff,**

v.

**Thomas Reusser, Administrator of the
Estate of Calvin E. Reusser,
Defendant.**

JUDGMENT

On April 21, 1981, this action was tried to the Court. Having considered the evidence adduced at trial and the arguments of counsel, and the court having previously entered its Findings of Fact and Conclusions of Law,

**IT IS HEREBY ORDERED, ADJUDGED
AND DECREED** that judgment be entered in favor of plaintiff American Bankers Insurance Company declaring that the death of Calvin Reusser on July 6, 1979, was not covered by the terms of the Personal Accident Insurance purchased by Reusser on July 6, 1979.

American Bankers is also entitled to costs of \$_____, and the court now grants judgment in plaintiff's favor for that sum.

DATED this 19th day of June, 1981.

FRED M. TAYLOR
United States District Judge